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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Holland, Michigan) Docket No. RC11-5-000
Board of Public Works)

**MOTION TO INTERVENE AND COMMENTS OF THE NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2011), the North American Electric Reliability Corporation ("NERC") hereby moves to intervene and submits these comments in the above-referenced proceeding. Pursuant to 18 CFR § 388.112 (2011), NERC requests confidential treatment of certain information which has been submitted in this proceeding under seal. Both public and confidential versions of NERC's motion to intervene and comments are being filed and marked accordingly.

NERC submits these comments in response to the appeal of the City of Holland, Michigan Board of Public Works ("Holland") of the decision of the NERC Board of Trustees Compliance Committee ("BOTCC") to uphold Holland's registration as a Transmission Owner ("TO") and Transmission Operator ("TOP") by ReliabilityFirst Corporation ("RFC").¹

As set forth in its BOTCC Decision, the NERC BOTCC reviewed and considered the evidence and arguments presented by Holland and RFC, determined that Holland is properly registered as a TO and TOP and explained the bases for its findings and conclusions. The BOTCC Decision is based on a straightforward application of the NERC Registry Criteria and is fully supported by the record presented to the BOTCC and the record now before the

¹ Appeal of the City of Holland, Michigan Board of Public Works of Registration Decision of the NERC Board of Trustees Compliance Committee, Docket No. RC11-5-000 (September 2, 2011) ("Appeal"). The NERC BOTCC decision, issued on August 12, 2011 ("BOTCC Decision"), has been submitted in this docket by Holland as Exhibit HOL-16.

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Commission. The BOTCC Decision is consistent with Section 215 of the FPA and Commission precedent thereunder. Holland's claims to the contrary are without merit, and the Commission should affirm the NERC BOTCC Decision.

I. MOTION TO INTERVENE

NERC was formed to serve as the electric reliability organization ("ERO") authorized by Section 215 of the FPA. NERC was certified as the ERO by the Commission's Order issued July 20, 2006, in Docket No. RR06-1-000.² NERC's mission is to improve the reliability of the bulk power system in North America. To achieve that, NERC develops and enforces reliability standards; monitors the bulk power system; assesses future adequacy; audits owners, operators and users for preparedness; and educates and trains industry personnel. As the ERO, NERC is subject to oversight by the Commission and applicable governmental authorities in Canada. On April 19, 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and RFC.³ Pursuant to a delegation agreement, NERC delegated to RFC the authority to enforce mandatory reliability standards within the RFC region. As explained further herein, NERC and the Regional Entities, including RFC, identify entities that should be registered for compliance with mandatory reliability standards. As a consequence, NERC has a substantial and direct interest in the Commission's decision in this proceeding. No other party can adequately represent NERC's interest. Therefore, it is in the public interest to permit this intervention.

² *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 *order on reh'g* 117 FERC ¶ 61,126 (2006).

³ *North American Electric Reliability Council, North American Electric Reliability Corporation.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007); *North American Electric Reliability Corporation*, 133 FERC ¶ 61,061(2010).

II. NOTICES AND COMMUNICATIONS

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III. HOLLAND’S APPEAL SHOULD BE REJECTED AS AN IMPERMISSIBLE COLLATERAL ATTACK ON THE FERC ORDERS ACCEPTING THE CURRENT BES DEFINITION, THE STATEMENT OF REGISTRY CRITERIA AND THE ORGANIZATION REGISTRATION AND CERTIFICATION MANUAL.

In Order No. 693,⁴ the Commission approved NERC's compliance registry process, including NERC's Statement of Compliance Registry Criteria (“Registry Criteria”), which describes how NERC and the Regional Entities identify entities that should be registered for

⁴ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,242, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

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compliance with mandatory reliability standards.⁵ NERC's Rules of Procedure also provide that an entity may seek NERC review of the registration decision and, ultimately, may appeal the registration decision to the Commission.⁶

A. The BES Definition

In Order No. 693, FERC also approved NERC's definition of bulk electric system ("BES"), which is an integral part of the NERC reliability standards and is included in the NERC Glossary of Terms Used in Reliability Standards ("NERC Glossary").⁷ The Commission stated in Order No. 693 that, "at least for an initial period, the Commission will rely on the NERC definition of 'bulk electric system' and NERC's registration process to provide as much certainty as possible regarding the applicability to and the responsibility of specific entities to comply with the Reliability Standards."⁸ As discussed herein, FERC has since directed NERC to develop revisions to the BES definition⁹ but that process has not been completed and has not resulted in a suspension of registrations or compliance and enforcement activities.

As indicated in NERC's Registry Criteria, "[e]ntities that use, own or operate elements of the bulk electric system as established by NERC's approved definition of bulk electric system below are (i) owners, operators, and users of the bulk power system [("BPS")] and (ii) candidates for registration (...)." The BES, in turn, is defined as:

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated

⁵ See Order No. 693 at P 92-95. The Commission has approved subsequent amendments to the Registry Criteria. See, e.g., *North American Electric Reliability Corporation*, 122 FERC ¶ 61,101 (2008).

⁶ See Rules of Procedure of the North American Electric Reliability Corporation, Rule 501.1.3.4.

⁷ See Order No. 693 P 75 n.47 (quoting NERC's definition of "bulk electric system").

⁸ *Id.* at P 75; see also Order No. 693-A at P 19 ("the Commission will continue to rely on NERC's definition of bulk electric system, with the appropriate regional differences, and the registration process until the Commission determines in future proceedings the extent of the Bulk-Power System").

⁹ In Order No. 743, the Commission directed NERC to develop revisions to the BES definition. See *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 75 Fed. Reg. 72,910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010); *order on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011).

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at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.¹⁰

In the Appeal, Holland disputes the appropriateness of NERC's reliance on the current BES definition, and in particular on the existing 100 kV threshold for transmission facilities in arriving at a decision regarding Holland's registration.¹¹ Specifically, Holland argues that NERC improperly relied on "its own definition of the 'bulk electric system,' which includes "the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher," and generally excludes "radial transmission facilities serving only load with one transmission source."¹² However, as this is the definition currently in effect, found in the NERC Registry Criteria, section I, and approved by the Commission, NERC could not lawfully rely on any other definition or criteria to determine whether Holland's facilities are part of the BPS (and, consequently, whether Holland should be registered).

Holland also seems to rely on FERC's Order No. 743 and the current efforts regarding the BES definition, including the potential future criteria for excluding facilities from the BES definition as a basis for its registration appeal.¹³ However, FERC's Order No. 743 did not suspend registrations in anticipation of the conclusion of such efforts and did not invalidate the current Registry Criteria or the existing criteria for identifying BES facilities. To the contrary,

Order No. 743 directed NERC to undertake the process of revising the bulk electric system definition to address the Commission's concerns about the broad discretion the current

¹⁰ *Id.* In Order No. 693, the Commission also explained that Section 215(a) of the FPA broadly defines the BulkPower System as: "facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) [and] electric energy from generating facilities needed to maintain transmission system reliability." Order No. 693 at P 76.

¹¹ See Appeal at 12.

¹² *Id.*

¹³ Appeal at 15-16.

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definition grants to Regional Entities to modify the definition without Commission or ERO oversight, and provided a suggested solution. Specifically, the Order directed the ERO to revise the definition of bulk electric system “through the NERC Standards Development Process to address the Commission’s concerns.” The Commission stated its belief that one effective way to address those concerns would be to eliminate the regional discretion contained in the current definition, which allows Regional Entities to define the term without Commission or ERO oversight; maintain the threshold contained in the current definition, which includes all facilities operated at or above 100 kV except defined radial facilities; and adopt an exemption process and criteria for excluding facilities that the ERO determines are not necessary to operate an interconnected electric transmission network.¹⁴

Importantly, in Orders No. 743 and 743-A, the Commission also did not prejudge a future BES definition and related exclusion process. The current criteria, which, among other things, include a 100 kV threshold, were properly applied to Holland. Any conjectures regarding how future criteria could result in a different outcome are beyond the scope of this proceeding. It would not be reasonable, and it certainly has not been required by the Commission, that registrations would be halted pending the outcome of this process particularly because the Commission expects that “the burden of [its] suggested proposal to eliminate the regional discretion in the current [BES] definition and maintain a bright-line 100 kV threshold should be minimal in all regions except NPCC.”¹⁵

The BES definition is not at issue in this proceeding. The only issue properly before the Commission is whether Holland meets the criteria for registration as a TO and TOP based on the facilities it owns and operates. As discussed below and in the NERC BOTCC decision, submitted by Holland in this docket as Exh. HOL-16, Holland does meet the criteria and should be registered as a TO and TOP.

¹⁴ Order No. 743-A at P 20, footnote omitted, *citing* Order No. 743, 133 FERC ¶ 61,150 at P 16 (emphasis added).

¹⁵ Order No. 743-A at P 109.

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Despite Holland's attempt to characterize NERC's decision to uphold Holland's registration as a TO and TOP as an unlawful expansion of NERC's jurisdiction,¹⁶ this argument is, at most, a distraction. In Order No. 743-A, FERC clarified that "regardless of the 100 kV threshold, facilities that are determined to be local distribution will be excluded from the bulk electric system."¹⁷ NERC is not disputing this assertion or the scope of the Commission's or NERC's jurisdiction under Section 215 of the Federal Power Act. The issue is whether Holland's facilities meet the existing criteria for inclusion in the BPS. As discussed below, they do.

B. NERC Registry Criteria

Holland also seems to disagree with how the Registry Criteria works. In particular, Holland seeks to reverse the approach contained in the FERC-approved Registry Criteria such that NERC and RFC would have the burden of demonstrating Holland's materiality to the BPS before Holland could be considered for registration under the criteria.¹⁸ In reality, the criteria itself serves as a proxy for materiality. Although a candidate for registration has the ability and the opportunity to demonstrate that it is not material for the reliability of the BPS, NERC's analysis starts with the criteria, not with an entity's own definition of what is material. FERC itself has recognized that the Registry Criteria are used to identify which users, owners and operators are material to the reliable operation of the BPS.¹⁹

¹⁶ Appeal at 10-15.

¹⁷ Order No. 743-A P 22.

¹⁸ Appeal at 12 and 34.

¹⁹ See *U.S. Department of Energy, Portsmouth/Paducah Project Office*, 124 FERC ¶ 61,072 (2008) at P 55 ("As indicated in NERC's Registry Criteria, the criteria and notes set forth in that document are used to identify which users, owners and operators are material to the reliable operation of the Bulk-Power System." (footnote omitted)).

C. Registry Process

Finally, Holland seems to disagree with how the registry process is currently organized and claims that it does not afford it the opportunity to extensively debate materiality issues with NERC or the Regional Entity.²⁰ Holland argues that, as a result, NERC's registration process does not meet the statutory criteria in Section 215 of the Federal Power Act.²¹ However, as noted above, the registry process has been approved by FERC and is not at issue in this case. Moreover, the registration process did afford Holland the opportunity to provide all of the information it deemed necessary to RFC and NERC and to have its arguments heard by these entities over the course of this proceeding. Holland's Exhibits HOL 7-16 in this docket comprise a significant amount of correspondence and documents exchanged by Holland, RFC, and NERC, including those documents that constituted the record for the NERC BOTCC decision. Holland had, and took advantage of, numerous opportunities to put forth information and arguments.

Holland had the burden of establishing that it was not "material" notwithstanding the fact that it met the criteria. It did not do so. Accordingly, its registrations as a TO and TOP were upheld. Contrary to the assertion of Holland, the Regional Entity and NERC are not required to "prove" the materiality of an entity that clearly meets the Registry Criteria because the criteria and notes are used to determine who is "material." Holland's challenge to the registry process is untimely, because this is a FERC-approved process that has been in place for four years. It is also without merit because Holland had, and still has in this proceeding, the opportunity to raise any issues regarding its particular registration.

²⁰ Appeal at 34-38.

²¹ *Id.*

IV. HOLLAND’S ALLEGATIONS OF DUE PROCESS VIOLATIONS ARE MERITLESS.

Holland’s argument that NERC failed to impartially review its claim simply because NERC, after considering the two parties’ positions, reached the same conclusion as RFC, is baseless.²² Holland’s objection to NERC’s consideration of Holland’s own self-description on Holland’s own website is equally misplaced.²³ Decisionmaking bodies routinely take notice of publicly available information, including information provided on websites.²⁴ Notably, Holland does not dispute the information, nor could it. The information Holland claims to be outside the record is information posted on Holland’s *own* public website and is consistent with information provided by Holland as part of the record. Yet, Holland speculates and alleges, without any support, that there may have been other information (or even potential improper communications) that could have influenced NERC’s decision.²⁵

All evidence and facts relied upon by NERC are clearly referenced in the BOTCC written decision (which expressly refers to NERC’s review of Holland’s own one-line diagram and Holland’s own explanations of how power flows on its system, among other things).²⁶ The fact that the outcome of NERC’s BOTCC decision was not the one Holland expected or desired does not, of itself, provide any basis for these types of claims of improper conduct. These are serious matters that should not be raised lightly.

²² Appeal at 37-38.

²³ Appeal at 38.

²⁴ See e.g., *In re Southern Nuclear Operating Co.*, 69 N.R.C. 613 (2009).

²⁵ Appeal at 38.

²⁶ BOTCC Decision (submitted by Holland as Exhibit HOL-16) at 11.

V. HOLLAND’S APPEAL SHOULD BE DENIED BECAUSE HOLLAND MEETS THE REGISTRY CRITERIA AND IS MATERIAL TO THE RELIABILITY OF THE BULK POWER SYSTEM.

As noted above, entities that use, own or operate elements of the BPS are candidates for registration. A TO is defined as “[t]he entity that owns and maintains transmission facilities,” and a TOP is defined as, “[t]he entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities.”²⁷ The BPS, as noted above, comprises “[t]he electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.”²⁸

A. Holland’s 138 kV lines are transmission rather than local distribution facilities.

Holland owns, maintains and operates 24 miles of 138 kV transmission lines which Holland improperly describes as local distribution facilities.²⁹ Distribution facilities generally are characterized as elements that are designed and can carry electric energy (Watts/MW) in one direction only at any given time from a single source point (distribution substation) to final load centers. This understanding is consistent with the current definition of transmission facilities in the Registry Criteria, which excludes radial transmission facilities serving only load with one transmission source from the definition. Even where a distribution line may fully extend between and connect at two substations (which is not uncommon) it will be “sectionalized,” *i.e.*, its circuit will be separated into two separate pieces at some point between the two substations, with each piece attached to one sub or, if necessary, the line may be in service as one circuit with

²⁷ See Registry Criteria, section II.

²⁸ See Registry Criteria, section I.

²⁹ Appeal at 13-15.

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one substation supplying the whole line load while the circuit is open at the other substation. This is done to prevent the distribution line from carrying any more power than what load along the line is drawing *i.e.* so there is no pass-through from the BPS at one end of the line back into the BPS at the other end of the line.

Holland's own descriptions of its loop of 138 kV line sections indicate that Holland does not operate the loop in a sectionalized state: "If a fault occurs that causes an outage of one of the two buses at Black River, thereby causing the Black River bus tie breaker to open, Holland's breaker that is connected to the dead bus will open, thereby maintaining a radial feed from the other bus at Black River"³⁰ *i.e.*, flow will automatically reverse where necessary on the loop to continue uninterrupted MW flow from Black River to Holland's loads along the loop; this is the key reliability benefit to Holland of having the loop at all. The behavior Holland describes of the operation of its 138 kV line loop, however, is a hallmark of networked (*i.e.*, non-radial) power system elements and is not anything that will be realized from a radial connection. As the lines in question are also 138 kV class, *i.e.*, they exceed the threshold voltage level of 100 kV, Holland in fact confirms NERC's and RFC's findings that its loop of 138 kV lines are part of the BPS rather than "radial" facilities.

In Order No. 743-A, FERC expressly supported the concept of using the 100 kV threshold as "the initial proxy for determining which facilities are local distribution, and which are transmission."³¹ FERC also clarified that it "intended to grant discretion to the ERO, as the entity with technical expertise, to develop criteria to determine how to differentiate between local distribution and transmission facilities in an objective, consistent, and transparent manner."³² And while FERC noted that its Order No. 888 seven factor test "could be relevant and possibly is

³⁰ Appeal at 27.

³¹ Order No. 743-A at P 67.

³² *Id* at P 68.

a logical starting point for determining which facilities are local distribution for reliability purposes,” it expressly allowed NERC to apply that test or to develop an alternative approach as it deems necessary.³³

B. Holland’s facilities are not excludable as radial.

As the BOTCC properly determined, the configuration of Holland’s interconnection, depicted in Holland’s own one-line diagram, shows that bi-directional flows can occur on Holland’s facilities despite the relaying scheme. In a radial configuration, a fault on either of Holland’s Black River-Waverly or Black River-Quincy lines would be removed from the system by operation of the Michigan Electric Transmission Company’s (METC) breaker at Black River associated with the line. Holland’s system configuration would require that Holland’s own breaker (at the Waverly or Quincy substations) also operate to break flow to the fault from the opposite side of the Black River bus (carried through Holland’s loop of 138 kV lines from the other side of the bus). Moreover, even if the METC breaker on the other side of the 138 kV bus at Black River were open or opened as part of the METC protection system action in connection with a fault, Holland would still need to open its own breaker to stop flow to the fault from its generating units at 48th St/Industrial Substation or DeYoung Generating Plant. As a result, Holland’s facilities are not radial and, as a consequence, Holland meets the Registry Criteria as a TO and TOP.

NERC disagrees with the position Holland expressed in Exh. HOL-5. In particular, NERC disagrees with the premise that [REDACTED]

[REDACTED] 34 [REDACTED]

[REDACTED]

³³ *Id* at P 69.

³⁴ Exh. HOL-5 at P 4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Holland’s registration is necessary to avoid a reliability gap.

Holland claims that excluding its facilities from the registry will not result in a gap to reliability coverage.³⁵ As discussed below, that is not the case. When FERC approved the Registry Criteria, it was with the understanding that entities that met such criteria should be registered and subject to compliance with applicable reliability standards.³⁶ Other than in a few unrelated circumstances, FERC has not required NERC to justify the application of specific standards to entities that were registered because they met the criteria for registration.

In addition, because Holland’s system is not radial as noted above, a fault on one of the 138 kV lines could require relaying coordination between Holland and METC. Compliance with Reliability Standards, including but not limited to those that require or ensure protection system maintenance, testing, coordination and corrective action plan in the event of misoperations is necessary to ensure the reliability of the BPS under these circumstances. Similarly, the loss of Holland’s internal generation would produce an increased draw from the BPS that could be significant if multiple units are lost. The restoration of Holland’s internal load must be considered and provided for in restoration plans.

The configuration of Holland’s transmission loop also depends on coordination with the interconnected transmission operator of the type required by the NERC Reliability Standards.

³⁵ Appeal at 31-33.

³⁶ Order No. 693 at P 75.

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Holland’s assertion that “there is effectively no chance under normal or contingency conditions that power will flow from the BES through one of the Holland BPW breakers, through the Holland BPW system and back into the BES through the other Holland BPW breaker”³⁷ is only valid where Holland’s breaker (i) operates and (ii) does so in a coordinated manner with METC breaker at the remaining non-faulted Black River bus. To ensure the local breaker operates, Holland needs to test and maintain its (138 kV bus) relays that generate the trip signal to the breaker. To ensure that the relay will trip the breaker first before METC’s equipment operates, Holland needs to ensure that its devices are coordinated (relay settings) with METC’s. And, of course, there is a need to ensure that Holland’s equipment has the (physical) capability to break fault currents that will arise on its lines from the Black River bus in the event that a fault such as they describe arises.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁸

Other standards that must apply would include, but are not limited to, requirements relating to the establishment of limits under FAC-014, requirements relating to reacting to operating limits under TOP-007, responding to transmission limit violations under TOP-008, and installing disturbance monitoring equipment per PRC-018. Because Holland owns and operates 138 kV equipment, establishing operating limits and operating its 138 kV equipment to safeguard against violating these limits per the applicable NERC standards are required.

³⁷ Appeal at 25-26.

³⁸ See Exh. HOL-7 at 2.

VI. CONCLUSION

Wherefore, in view of the foregoing, NERC respectfully requests that it be permitted to intervene with all the rights that attend to such status and requests that the Commission issue an order consistent with the comments set forth herein.

Respectfully submitted,

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Dated: October 3, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 3rd day of October, 2011.

/s/ _____
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